

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 827, AFL-CIO**

**and**

**Case No. 22-CB-9969**

**RONALD GEBHART, AN INDIVIDUAL**

*Brian Caufield, Esq.*, Newark, NJ,  
for the General Counsel.

*Paul M. Levinson, Esq.*, Lakewood, NJ,  
for the Respondent.

**DECISION**

**Statement of the Case**

**STEVEN DAVIS, Administrative Law Judge.** Based on a charge and a first amended charge filed on November 17, 2004, and January 12, 2005, respectively, by Ronald Gebhart, An Individual, a complaint was issued on March 23, 2005 against International Brotherhood of Electrical Workers, Local 827, AFL-CIO (Respondent or Union).

The complaint alleges essentially that the Respondent (a) removed Gebhart from his elected position as an alternate shop steward and (b) thereafter refused to permit him to perform the duties of that position after his re-election to that office, in both cases because he threatened to file charges against the Respondent with the Board.

The Respondent's answer denied the material allegations of the complaint, and on May 3, 2005, a hearing was held before me in Newark, New Jersey.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following:

**Findings of Fact**

**I. Jurisdiction**

Verizon of New Jersey, a New Jersey corporation having a place of business at 1111 11<sup>th</sup> Avenue, Neptune, New Jersey, has been engaged in providing telecommunication services. During the past 12 months, Verizon derived gross revenues in excess of \$100,000, and purchased and received at its Neptune, New Jersey facility, goods valued in excess of \$50,000 directly from points outside New Jersey. Based on the above, I find that Verizon is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent admits, and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

### A. Gebhart's Alleged Threats and Dismissal from Office

5 The Respondent represents about 7000 technicians and other employees employed by Verizon in New Jersey. Its officers, who serve statewide, include the president and business manager Dominic Turdo. Below the statewide level, the Union is divided into six districts, including Central, the district involved here. The positions in the Central district and their  
10 occupants are executive board member Ed Cocliff, chief shop steward Glenn Puzo, the shop stewards, including Dennis Ferrel, and alternate shop steward Gebhart. About 50,000 grievances and more than 1,000 demands for arbitration are filed by the Union each year.

15 Gebhart served as the alternate shop steward in the Neptune work center from February, 2003 to February, 2005. He previously served as alternate shop steward and shop steward at a different location from 1997 to 2002. His responsibilities as alternate shop steward at Neptune included filing grievances of employees and participating in grievance discussions at the first step with the employee's immediate supervisor. One of Gebhart's "major complaints," and the subject of an "ongoing argument" with chief steward Puzo was that Puzo was not  
20 handling grievances in a timely manner. This issue was of concern to other Union members as well. There was testimony that grievance meetings were not being held timely and decisions on grievances were not received until months after they were filed.

25 On September 29, 2004,<sup>1</sup> Verizon employee James Severson was suspended for 10 days. Immediately upon being told of the suspension, Gebhart informed chief steward Puzo of the discipline, and also notified Verizon manager Michael Lang that a grievance would be filed, and requested that a first step grievance meeting be held on October 8. Gebhart represents the grievant at the first step meeting, and Puzo represents the grievant at the second step.

30 Gebhart testified that on October 1, he called Puzo and asked the status of Severson's suspension, and what evidence he had collected.<sup>2</sup> Puzo replied that he heard nothing about it, and that he was informed that there was "no problem in the Central unit." Gebhart replied that if there was no problem in the unit, grievances should be processed more quickly. Gebhart asked Puzo for the status of other grievances he filed, and unfair labor practice charges Gebhart had  
35 written. Gebhart testified that Puzo told him that "we do not have to file your labor charges." Gebhart told Puzo, according to his pre-trial affidavit, "from now on, I was going to hold Verizon to the letter of the contract and if they violate the contract I would file Board charges against Verizon. Puzo said that I could not file them, and only Local 827 could file the Board charges." Gebhart also quoted Puzo as saying "we do not have to file the charges." Gebhart told Puzo  
40 that "if you don't file the charges I will file Board charges against you for not doing your job."<sup>3</sup> Puzo laughed a little, and the conversation ended. Gebhart admitted arguing with Puzo and raising his voice during that conversation, but denied threatening him, as set forth below.

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45 <sup>1</sup> All dates hereafter are in 2004 unless otherwise stated.

<sup>2</sup> Although Puzo does not attend the grievance meeting until the second step, it has been Gebhart's experience that Puzo speaks to the manager immediately upon being informed of the discipline by Gebhart, obtains information concerning the reason for the discipline, and at times is able to secure a reduction in the discipline even before the first grievance step.

50 <sup>3</sup> Although Gebhart threatened to file a charge against Puzo, I find that this was a threat to file a charge against the Respondent, since Gebhart's threat was that Puzo was not doing his job as chief shop steward.

At hearing, Gebhart explained that his demand that Puzo file the charges did not mean that he expected Puzo himself to file the charges. Rather, he meant that the charges be filed pursuant to whatever procedure the Respondent utilized in determining whether charges should be filed, such as a vote by the executive board, and subsequent review by the Union's attorney prior to filing. Gebhart was aware of this procedure, having been informed of it in the Summer of 2004. Gebhart claims that by stating that his charges would not be filed, Puzo was refusing to follow the above procedure, and was implying that Gebhart's charges would not be presented to the executive board or the Union's attorney.

Gebhart testified that later that day, he received a call from Union president Turdo, who told him "you can't threaten to file labor charges against my chief stewards." Gebhart responded that he could do so if the steward is not doing his job. Turdo replied, "shut the fuck up." Gebhart then told Turdo that if he wanted him to shut the fuck up, he should "come down here and shut me up." Turdo then told Gebhart that he was "fired. You no longer represent Local 827." Gebhart said that he then argued with Turdo, raising his voice.

Dennis Sheridan, a Union member who had held various positions in the Union including the state-wide office of recording secretary, chief shop steward and unit treasurer, testified that Gebhart called him immediately after being dismissed. Sheridan then called Turdo and asked him to reconsider his decision because Sheridan considered Gebhart to be an excellent steward. Sheridan described Turdo as being very emotional and angry, refusing to rescind the discharge and referring to Gebhart as "very abrasive." Sheridan knew that the two men did not like each other. Although Sheridan was not told the reason for Gebhart's removal, he believed that Gebhart's dismissal was caused by an argument they had - a personal matter. Sheridan warned that Gebhart could simply run for re-election and win, but Turdo said that he would not permit him to run. When Sheridan told Turdo that he could not do that, Turdo said that he could do whatever he wanted. Sheridan asked other long-time Union officials and friends of Turdo to intervene. According to Sheridan, they called Turdo but were told to "stay out of it."

Gebhart's employment with Verizon was not affected in any way as a result of his dismissal as alternate shop steward. In addition, he was permitted to attend union meetings, nominate himself and run for re-election, but he could not attend shop steward meetings.

During the week of October 4, Turdo called Gebhart and said "we have to talk." Gebhart asked to bring a witness to their meeting, and Turdo told him that he did not need one. Gebhart replied that he wanted a witness anyway. Gebhart answered that if he could not bring a witness, he wanted Turdo to conduct an election for the vacant alternate shop steward position, and he would "run and win again." Sometime later, Gebhart told executive board member Cocliff that shop steward Bellamy Shivers would be his witness. Cocliff replied that Turdo said he could not have Shivers as a witness. Turdo told him that he would not pay two people for their attendance at the meeting, a reference to Gebhart and his witness.

An election for the vacant position was held on November 5 at which Gebhart ran unopposed and won. Upon his election, Gebhart immediately called Michael Lang, Verizon's manager, and asked for a list of grievances, and arranged for a date to hear certain grievances.

During a subsequent conversation on November 9 or 10, Turdo told Gebhart that he would not be permitted to resume his duties as alternate shop steward or hear any grievances until they met. Gebhart asked why he was the only steward in the Central unit in the state who had to meet with Turdo after winning his election. Gebhart again said that he wanted to bring a witness to the meeting which was to take place at Union headquarters. Turdo said he could not bring a witness, and that he would not pay for two people to attend the meeting. Gebhart replied

that he need not pay either of them, and refused to attend the meeting without a witness. Gebhart then asked Turdo if he is saying that a dues-paying member (Gebhart's witness) could not attend a meeting at headquarters. Turdo then replied that he could bring a witness, but that  
 5 no one would be paid for attending.

### **B. The November 30 Membership Meeting**

10 In November, 2004, Gebhart was told by Tom Riley, a shop steward in a different location, that he heard that Gebhart was fired because he threatened to choke Puzo. Gebhart denied threatening Puzo, and mentioned this accusation to Sheridan.

15 Shortly thereafter, a general membership meeting was held on November 30, at which Cocliff and Puzo made oral reports and responded to members' questions. Sheridan testified that he told Puzo that he heard a rumor that Gebhart was fired for threatening to choke him. Sheridan asked if that was true, and Puzo said no, Gebhart did not threaten to choke him. Sheridan also asked if Gebhart was removed because he threatened that if Puzo did not file grievances in a timely fashion and process labor charges, that Gebhart would file charges against Puzo. Puzo answered "yes." Gebhart and Union members Brian McCann and Robert  
 20 McGillin essentially corroborated Sheridan's testimony as to his questions and Puzo's answers. McCann said that although there were 50 to 70 people at the meeting, and there were many exchanges between Gebhart, Sheridan and Cocliff, these specific questions and answers could be heard by all those present.

25 Puzo denied telling the assembled members that Gebhart did not threaten to choke him, and also denied saying that Gebhart was removed because he threatened to file a charge against him. Executive Board member Cocliff who was present at the November 30 meeting, testified that he did not hear Puzo say that Gebhart was removed because he threatened to file charges against the Union, and he did not hear Puzo say that Gebhart did not threaten to choke  
 30 him. Puzo spoke to Gebhart between October 1 and December 20, but did not raise the issue of Gebhart's "behavioral problems."

The November 30 membership meeting minutes do not contain the above questions and answers. The relevant part of the minutes is as follows:

35 *Sheridan:* 2 meetings ago we addressed problems with the grievance procedure. After that meeting [Gebhart] called Glenn [Puzo] and told him that if he buries any grievances, that he would bring Glenn up on charges. After that conversation, the President  
 40 removed [Gebhart] from his position. I assume that you, Glenn, went to Ed [Cocliff] and Ed went and cried to Dominic [Turdo]. I want to know what happened.

45 *Puzo:* After I received the call from Ron [Gebhart] I called Dominic. Dominic called Ron. As a result of the conversation they had, Dominic removed Ron. We posted for the vacancy at Neptune. Ron ran unopposed for the position of alternate. Dominic has stated that Ron is not to represent any union member by hearing grievances until he meets with Dominic.

50 Robert Lenox, the unit recorder who takes the minutes of the Union's meetings, took handwritten notes at the November 30 meeting without the aid of a tape recorder. He transcribed his notes onto a computer and then disposed of the written notes. Lenox testified

that he did not recall hearing Puzo state that Gebhart was removed from office because he threatened to file charges against the Union, nor did he hear Puzo state that Gebhart did not threaten to choke him. Lenox conceded that on occasion he does not record a question or answer, but he would have noted the questions that Sheridan alleged he asked, and the answers allegedly given by Puzo since they would have caught his attention. At one point in the minutes, immediately after the paragraphs quoted above, the minutes indicate that Gebhart and Cocliff had a heated exchange, talking over each other "and it is not possible to get coherent minutes."

### C. The December 20 Meeting

Although Gebhart had won re-election to his position after his removal, Turdo refused to permit him to function as the alternate shop steward until they met. In October, Gebhart was told that he had to meet with Turdo, Cocliff and Puzo. However, no reason for the meeting was given to him. Turdo stated that when he was told that Gebhart did not want to meet, and instead asked that an election be held for the vacant position, Turdo told Cocliff that an election can be held, but even if Gebhart wins, "he's not going to hear a grievance until he understands the procedure in the Central unit."

Turdo testified that his request that Gebhart meet with him was prompted by frequent phone calls to him made by Gebhart and Sheridan beginning in about February, 2004, in which they complained that Cocliff and Puzo were not doing their jobs. He told the two men that they should speak to Puzo, but according to Turdo that was not done, and they continued to accuse Puzo of misplacing grievances, or failing to follow procedures. Puzo had also complained to Turdo that the grievance procedure he instituted in May or June, 2004, was not being followed.

The purpose of the meeting, according to Turdo, was to ensure that Gebhart understood how grievances were to be handled, so that there would be no reason for further accusations that Puzo physically lost certain grievances, or failed to file grievances. Turdo wanted Gebhart to follow the procedures in handling grievances, particularly the use of the computer system for logging-in the grievances filed, and the seven-item grievance procedure system produced by Puzo entitled "Central unit grievance procedure." It was Turdo's belief that if the proper procedures, as outlined in Puzo's memo, had been followed, there would have been no complaints about Puzo's processing of grievances. Gebhart stated that he was not given that document until after he was re-elected.

Before agreeing to attend the meeting, Gebhart requested that he have "representation" at the meeting. Turdo refused, saying that this was a meeting among the Union's representatives, and he did not need representation. Turdo stated that he told Gebhart that if the "meeting goes okay," and we "come to an understanding, I'll reinstate you." Gebhart denied that Turdo told him the purpose of the meeting or that he would be reinstated if it went well. He quoted Turdo as saying only that "we have to talk."

Turdo explained that the Union's rules do not permit or require an alternate shop steward to have a witness or union representation at the meeting, and that the meeting was not intended to be of an investigatory or disciplinary nature, although he conceded that it was possible that one result of the meeting would be that he would not reinstate Gebhart. Turdo further noted that he could not impose discipline on Gebhart at that meeting since discipline could only take place after formal written charges are filed, and a hearing held before a trial board.

The meeting demanded by Turdo in October and again in November took place on

December 20. The reason for the delay in meeting was the dispute over Gebhart's demand that a witness be present. Present at the 30-minute meeting were Turdo, Coccliff, Puzo, Gebhart and his witness Dennis Sheridan.

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According to Gebhart, Turdo announced that the purpose of the meeting was to discuss the grievance procedure. Gebhart asked what the procedure was. Puzo told Gebhart that all grievances that were given to Verizon should be sent to him so that he could enter them in the computer, and a copy must be faxed to Verizon. Gebhart mentioned that he had been following that procedure. Puzo replied that such a practice had not been followed routinely by the shop stewards. According to Gebhart, Turdo may have said that Coccliff and Puzo are in charge, and can implement whatever policies they wish. Puzo stated that Turdo directed him to follow the grievance procedure that he put in place.

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Sheridan testified that at the meeting, they spoke about the procedure for handling grievances. He began to mention some complaints that he and Gebhart had about the process when Turdo interrupted him and said that the purpose of the meeting was to ensure the Gebhart would follow the established grievance procedures, and if Gebhart agreed to do so, he would be reinstated. Gebhart agreed to follow the grievance procedure and the meeting ended. Puzo said that he would advise Verizon manager Lang that Gebhart was now authorized to handle grievances, and that he was fully reinstated to his position as alternate shop steward.

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There was no discussion at the meeting of Gebhart's alleged physical threat to Puzo, or his behavior toward Turdo.

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#### **D. The Respondent's Evidence Concerning the Alleged Threats**

Puzo testified that Gebhart called him on October 1, complaining that he was not processing grievances in a timely manner. Puzo told him that although the contract requires that grievances be filed within 30 days of the incident, the Union has an agreement with Verizon whereby Verizon does not insist on that time limitation in exchange for the Union's agreement that it will not insist that the employer meet with it within the 14 days set forth in the contract. Gebhart disagreed with this arrangement and told Puzo that he should follow the contract to the letter, adding "if [you] don't file the grievances – if I don't process the grievances in a timely manner, he will file ULP charges against me, personally." Puzo told him to "go ahead."

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Puzo stated that during their conversation, Gebhart "pushed" him to resolve Severson's suspension, yelling at him and demanding that "you have to take care of this." Puzo told Gebhart that he spoke with Verizon's manager about the matter, and Gebhart called him a liar. Puzo laughed at the reference to him as a liar and Gebhart told him he knew that he was lying because he was laughing. Gebhart added: "If you had called me a liar, I would be in your office right now with my hands around your throat." Puzo then sarcastically asked if there was anything else he wanted to discuss during this "wonderful" or "cheery" conversation. Gebhart said no, and the discussion ended. Puzo then called Turdo, telling him that Gebhart threatened to file labor charges against him and threatened to choke him. Puzo stated that Gebhart and other Union members had, before this incident, told Puzo that he was not doing a good job, but Gebhart's threat to choke him was "above and beyond" the usual comments Gebhart made, and he did not consider it "shop talk."

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Turdo testified that on October 1, he was told by Puzo that he and Gebhart had discussed certain grievances, and that Gebhart threatened to file Board charges, and also threatened to choke Puzo. Turdo then called Gebhart. As soon as Gebhart answered the phone, he told Turdo that "it's about fucking time you called me." The conversation deteriorated

from there. According to Turdo, they called each other obscene names, and Gebhart would not let him talk. Thirty to sixty seconds after the call began, Turdo told him to "shut the fuck up, let me talk... as of today, you're no longer representing this local," concluding the conversation.

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Turdo stated that he removed Gebhart from office because he had "total disrespect" for Turdo, his office and the Union, and he could not tolerate Gebhart's threat to choke his chief shop steward. Turdo testified that Gebhart's disrespect alone would have been sufficient to cause his discharge given the nature of the "background" between them prior to that time. In addition, his threat to choke Puzo, standing alone, would also have provided a sufficient basis for his removal. Turdo did not file internal Union charges against Gebhart for making the physical threat, and did not believe that it was "sufficient" enough to involve the police.

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Turdo denied removing Gebhart because he threatened to file charges against the Respondent. Turdo, Coccliff and Puzo collectively testified that Gebhart, Sheridan and other members made similar threats to file Board charges against the Union in the past if certain grievances were not filed, and no action was taken against them.

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In fact, Turdo testified that in July, 2002, Union shop steward Irene Kecks spoke to the Union's executive board about a matter, and disagreed with the board's decision. She then filed a Board charge against the Union during Turdo's presidency. The charge alleged, inter alia, that the Union's officers and executive board (a) engaged in actions which were contrary to the best interests of its members and (b) attempted to nullify a grievance settlement between Verizon and the Union steward, attempted to coerce and interfere with the ability of Union members to earn differential payments and retirement credits, and ordered employees not to perform certain duties in violation of Section 8(b)(1)(A) of the Act. Turdo testified that he took no action against Kecks because she filed the charge, and she continued to remain a steward after the charge was withdrawn about one month later.

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Turdo testified that it is not unusual to dismiss shop stewards. He stated that in 1998 when he was vice president of the Respondent, stewards Peter Flamini and Jane Kuhfuss were removed from office because the president believed that they violated the Union's picket line policy. They were both sent a letter advising them of their dismissal, and their membership data file noted their removal. In contrast, Gebhart was not sent a letter, but was orally advised of his dismissal. Nor was his dismissal noted on his membership data file. Turdo explained that Flamini and Kuhfuss were sent a letter and their files marked simply because the president at the time decided to do so, and not because any Union procedure or rule required it.

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Shop steward Dennis Ferrel testified that in August, 2004, he called Gebhart, who was then the alternate shop steward, informing him that grievances were to be heard early the following week, and asking whether there were additional grievances that he should be aware of. Gebhart asked him to file or present a grievance alleging that Verizon blackmailed New Jersey Governor James McGreevey into publicly revealing, on August 12, 2004, that he was homosexual, and then resigning his office. Gebhart's theory of the grievance was that McGreevey refused to give Verizon a rate increase it sought, and for that reason Verizon was going to blackmail McGreevey with information about his sexual orientation, causing McGreevey to make the announcement. Ferrel refused to file such a grievance because he considered it to be hearsay or slanderous.

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Ferrel stated that in the following week, he had a heated argument with Gebhart over this grievance, with Gebhart demanding that he file whatever grievances Gebhart presented. Ferrel refused, saying this grievance was not legitimate. According to Ferrel, Gebhart threatened to knock his teeth down his throat. Gebhart denied writing or filing a grievance

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concerning McGreevey. He testified at first that they “joked around” about filing such a grievance, but then stated that they argued about whether such a grievance should be filed. He also denied that the grievance involved an allegation of blackmail, and denied asking Ferrel to file such a grievance. Gebhart also denied threatening Ferrel with physical harm.

Puzo described Gebhart as an active alternate shop steward, processing more grievances than the average steward, and policing the contract aggressively. Puzo does not believe that such increased activity interfered with him since it is their job to police the contract and enforce the contract’s terms. However, Puzo noted that increased grievances result in more work for him. As it is, Puzo was responsible for the grievance handling for six work centers employing about 740 workers, 20 to 25 shop stewards and 20 to 25 alternate shop stewards.

## Analysis and Discussion

### I. Gebhart’s Removal from his Position as Alternate Shop Steward

Section 8(b)(1)(A) of the Act provides that it is an unfair labor practice for a union to:

Restrain or coerce employees in the exercise of the rights guaranteed in Section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

It is well settled that removing a union member from his position in union office because he filed a charge against the union with the Board, or, in this case, threatening to file a charge, violates Section 8(b)(1)(A) of the Act. In *N.L.R.B. v. Industrial Union of Marine & Shipbuilding Workers of America*, 391 U.S. 418, 424 (1968), the Court upheld the Board’s finding that the expulsion of a union member for filing a charge with the Board violated Section 8(b)(1)(A) of the Act. In that case, the union’s constitution stated that a union member aggrieved by any action of the union must exhaust all remedies and appeals within the union before resort to any tribunal outside the union. The union member did not pursue the intra-union appeals procedure. The Court stated:

8(b)(1)(A) assures a union freedom of self-regulation where its legitimate internal affairs are concerned. But where a union rule penalizes a member for filing an unfair labor practice charge with the Board other considerations of public policy come into play.”

...  
[T]he proviso in Section 8(b)(1)(A) that unions may make their own rules respecting the acquisition or retention of membership “is not so broad as to give the union power to penalize a member who invokes the protection of the Act for a matter that is in the public domain and beyond the internal affairs of the union.”

...  
The policy of keeping people “completely free from coercion,” against making complaints to the Board is therefore important in the functioning of the Act as an organic whole.

...  
Any coercion used to discourage, retard, or defeat that access [to the Board] is beyond the legitimate interests of a labor organization. 491 U.S. at 424-425.



Thus, Section 8(b)(1)(A) proscribes conduct against union members that directly impedes access to the Board's processes. *Office Employees Local 251 (Sandia Natl. Laboratories)*, 331 NLRB 1417, 1424 (2000). *Local 212, UAW, (Chrysler Corp.)*, 257 NLRB 637 (1981) is particularly applicable here. In that case, the Board held that the union's removal of an individual from his position as chairman of its fair employment practices committee because he filed a charge with the Board against the union violated the Act. The Board noted that his removal because he filed a charge "is likely to have an adverse impact upon his willingness to seek access to the Board in the future. The removal is further likely to indicate to other unit employees that the exercise of their right to file charges against Respondent might result in union sanctions." Thus, where Puzo at a general membership meeting acknowledged that Gebhart was removed from his position because he threatened to file a charge, the effect on the other members who were present was substantial, and could only cause them to be extremely reluctant to invoke the Board's processes.

This case presents sharp credibility issues. Based on the record as a whole, I find, as alleged in the complaint, that Gebhart was removed from his position as alternate shop steward because he threatened to file a charge with the Board. I make this finding for the following reasons.

First, it is undisputed that Gebhart told Puzo that he would file a charge against the chief shop steward or the Union for failing to represent its members properly. It is also undisputed that Puzo told Turdo that Gebhart made this threat. In their phone conversation that day, Turdo told Gebhart that he was fired from his position as alternate shop steward. The timing of Gebhart's removal, coming shortly after his threat to file a charge, supports a finding that Gebhart was dismissed because he made that threat. *Teamsters Local 79 (Carl Subler Trucking)*, 269 NLRB 1132, 1135 (1984).

In addition, I credit the mutually consistent, corroborative testimony of Gebhart and union members McCann, McGillin and Sheridan, that at the November 30 general membership meeting, Puzo admitted that Gebhart was removed because he threatened to file a charge, and denied that Gebhart threatened to choke him. The Respondent argues that the three union members were friends of Gebhart, and that Sheridan was also apparently part of a group which actively opposed the administrators of the Respondent, and that therefore they should not be credited. I do not agree. They gave consistent testimony concerning Sheridan's questions and Puzo's answers. As union members they had less to gain by lying than Puzo, a member of the Union's hierarchy.

In contrast, although Puzo denied saying at the union meeting that he was threatened by Gebhart, and also denied that Gebhart was removed because he threatened to file a charge, the Respondent's other witnesses, Cocliff and Lenox, were equivocal in their testimony as to the events of the November 30 meeting. Cocliff did not deny that Puzo made the statements. He testified only that he did not hear Puzo make the disputed remarks. This implies that Puzo may have made the comments, but that Cocliff simply did not hear them. Similarly, Lenox did not recall hearing Puzo state that Gebhart was removed because of his threat to file a charge, and did not hear Puzo state that Gebhart did not threaten to choke him. This is quite different from denying that Puzo made the statements. Further, Cocliff and Lenox hold positions in the Respondent's administration, and cannot be called disinterested witnesses to the extent that McCann, McGillin and Sheridan are.

In addition, the minutes of that meeting, set forth above, are instructive. The Respondent cites them to prove that Puzo did not make the statements attributed to him. I do not agree. I find that the absence of the alleged threat to choke Puzo lends support to a finding that Gebhart

did not make that threat. Thus, according to the minutes, Sheridan asked Puzo what happened after Gebhart told Puzo that he would file a charge. Puzo's answer was that he called Turdo, and Turdo removed Gebhart from office. It is significant that Puzo did not clarify the question asked by Sheridan by stating that in their conversation, Gebhart also threatened to choke him. Puzo let Sheridan's narrative of the conversation stand, leaving the implication that the only threat made by Gebhart was his filing of a charge.

I do have some questions concerning Gebhart's credibility. He testified the he was joking about the McGreevey grievance, but later stated that he and steward Ferrel argued about whether it should be pursued. Clearly, Gebhart was not joking about the grievance. If he did not consider it a serious matter, he and Ferrel would not have argued about it. However, in view of the above, I believe the preponderance of the evidence supports a finding that Gebhart did not threaten to choke Puzo, and that the reason for his dismissal was his threat to file a charge.

Based on the above, I find that Gebhart's protected activity of threatening to file a charge against the Respondent was a motivating factor in his removal from his position as an alternate shop steward. *Wright Line*, 251 NLRB 1083 (1980). Once the General Counsel has made this showing, the burden shifts to the Respondent to establish that it would have taken the same action against Gebhart even in the absence of his protected activity. *Teamsters Local 375 (Consolidated Freightways)*, 317 NLRB 212, 213 (1995).

The Respondent argues that Gebhart was removed because he threatened to choke Puzo, and because he was insubordinate toward Turdo. As set forth above, I have credited Gebhart's denial that he threatened to choke Puzo. Indeed, even assuming Puzo's testimony was credited, at most the alleged threat to choke was an implied, veiled threat, made on the telephone and not in person, and depended on a condition before it would be effected. Thus, according to Puzo's testimony, Gebhart called Puzo a liar to which Puzo laughed. Gebhart said that if Puzo had called him (Gebhart) a liar, he would choke him. Clearly, Puzo had not called Gebhart a liar, and therefore no threat to Puzo was implicated. In any event, I have credited the three disinterested union member witnesses, other than Gebhart, who testified that at the November 30 meeting, Puzo denied that Gebhart had threatened him.

Nevertheless, according to the testimony of Puzo and Turdo, Puzo told him that Gebhart threatened to choke him. The Respondent argues that even if Puzo was mistaken as to Gebhart's threat, Turdo relied on Puzo's statement and was therefore justified in removing Gebhart for that reason. I do not believe that Turdo removed Gebhart because he was told that he had threatened to choke Puzo. First, a recent alleged physical threat by Gebhart to punch steward Ferrel was not the subject of any discipline, or removal from office, by Turdo. Further, if the threat to choke was the real reason for the discipline, there was no mention of corrective action, or an apology demanded by Puzo or Turdo at any of the personal meetings they had with Gebhart following the alleged threat. As to the other reason cited by Turdo for Gebhart's removal, his alleged insubordination to Turdo in their October 1 phone conversation, even according to Turdo's description of the conversation, the most that can be said of it was that there was mutual cursing and a shouting contest between the two men.

The Respondent further relies on the fact that the filing of a charge against it by steward Kecks resulted in no action taken being against her. In the absence of any evidence of an antagonistic relationship between Kecks and Turdo, the fact that Turdo dismissed Gebhart and did not do the same to Kecks may be explained by Turdo's view that Gebhart was "very abrasive" and because, to use Turdo's expression, of their "background" which consisted of Gebhart's aggressive insistence that the Union process grievances in a timely manner and his frequent complaints to Turdo about the Puzo's ineffectiveness.

Finally, the Respondent argues that since Gebhart, Sheridan and other members previously threatened to file charges against the Respondent without action being taken against them, it must follow that no action was taken against Gebhart for making the same threat here. There was no evidence that in any those instances where prior threats to file a charge were made, there were conversations with Turdo which rose to the level of a shouting contest with obscenities being exchanged between the participants. I believe that the combination of the threat to file a charge and the heated exchange between Turdo and Gebhart caused Turdo to remove Gebhart. Turdo's anger at, and determination to discharge Gebhart are demonstrated by his refusal to reconsider his actions even upon being called by Sheridan and other long-time Union officials.

I accordingly find and conclude that the Respondent has not met its burden of proving that it would have removed Gebhart from his position as alternate shop steward even in the absence of his protected activity of threatening to file a charge. *Wright Line*, above.

## **II. Respondent's Refusal to Permit Gebhart to Perform his Duties**

The complaint alleges that following Gebhart's election as alternate shop steward on November 5, Turdo refused to permit him to perform the duties of that position until he met with Turdo, Puzo and Cocliff because Gebhart threatened to file a charge against the Respondent.

In applying a *Wright Line* analysis to this allegation, I can find no evidence that the Respondent's refusal to permit Gebhart to perform his duties after his election until he attended a meeting was due to Gebhart's threat to file a charge. None of the Respondent's agents stated that such action was taken against Gebhart because of his protected activity in threatening to file a charge.

Turdo's reason for demanding a meeting before restoring Gebhart to the full responsibilities of his position was that Turdo properly wanted to ensure that Gebhart was familiar with, and followed the grievance procedure as prescribed by chief steward Puzo. Turdo's reason for insisting on the meeting is reasonable since Puzo complained that his procedures were not being followed. There was evidence that, not having Puzo's Central unit grievance procedure list until after his re-election, Gebhart may not have understood the precise procedure that Puzo wanted to be followed in presenting grievances, and in fact asked at the December 20 meeting what the procedure was.<sup>4</sup>

In addition, there was evidence of complaints by Gebhart to Turdo concerning Puzo's performance of his duties as chief shop steward, and Turdo reasonably sought, in a meeting with Gebhart, to ensure that Gebhart was aware of the established procedure and followed it. It was Turdo's reasonable belief that if Puzo's procedure was followed, there would be no need to complain about the way the unit's grievances were processed. In this regard, I credit Turdo's statement that Gebhart would not hear a grievance until he understood the procedure in the Central unit.

The meeting, at which there was no mention of the threat to file the charge, was solely

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<sup>4</sup> The question whether the delay in meeting was Gebhart's or Turdo's fault, or whether Gebhart reasonably requested representation at the meeting are irrelevant to the issue of whether the Respondent's refusal to permit Gebhart to resume his duties violated the Act.

concerned with Gebhart's understanding of the procedure to be followed in filing and processing grievances, at the end of which Puzo announced that he would advise Verizon that Gebhart could immediately resume his duties as alternate shop steward.

I have considered the question of whether a violation should automatically be found since had it not been for Gebhart's unlawful removal from his position, he would not have run for re-election, and accordingly he would not have had his duties removed. However, I find that the Respondent's refusal to permit him to perform his duties as steward was a result of Turdo's reasonable belief that Gebhart was not following the grievance procedure as mandated by Puzo. Thus, the refusal to permit him to perform his duties was not the direct result of the Respondent's unlawful removal of Gebhart from his position on October 1. There was an "insufficient nexus" between his removal from his position and the subsequent refusal to permit him to perform his duties. *Essex Valley Nurses Association*, 343 NLRB No. 92, slip op. at 3 (2005); See *Heck's, Inc.*, 280 NLRB 475, 476 (1986) where an employee was transferred from the position of stocker to cashier, and then engaged in misconduct as a cashier. The Board stated that it could not find a violation on the theory that but for her unlawful transfer to a cashier's position she would not have had the opportunity to engage in misconduct in that position. Accordingly, the Board examined her misconduct as a cashier apart from her occupying that position as a result of her unlawful transfer. It found that her misconduct as a cashier separately warranted her discharge.

Accordingly, I find that the General Counsel has not met his initial burden of establishing that the Respondent's refusal to permit Gebhart to perform his duties as alternate shop steward was unlawfully motivated by his threat to file a charge. Even assuming that the General Counsel made this showing, I find that the Respondent properly would have refused to permit Gebhart to perform his duties until a meeting was held to ensure that he fully understood the grievance-filing procedures even in the absence of his threat to file a charge. *Wright Line*, above.

### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(b)(1)(A) by removing Ronald Gebhart from his position as alternate shop steward because he threatened to file a charge with the Board against the Respondent, I shall order it to cease and desist therefrom. Inasmuch as Gebhart won re-election to his position following his removal, and thereafter resigned from that position, it does not appear that an affirmative remedy as to his reinstatement as an alternate shop steward is warranted.

### Conclusions of Law

1. Verizon of New Jersey is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 827, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By removing Ronald Gebhart from his position as alternate shop steward on October 1, 2004 because he threatened to file a charge with the Board against the Respondent, the Union has violated Section 8(b)(1)(A) of the Act.

4. The Respondent has not violated the Act by, on or about November 8, 2004, refusing to permit Ronald Gebhart to perform the duties of alternate shop steward following his re-election to that position.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

### ORDER

The Respondent, International Brotherhood of Electrical Workers, Local 827, AFL-CIO, East Windsor, NJ, its officers, agents, and representatives, shall

#### 1. Cease and desist from

(a) Removing union shop stewards and alternate shop stewards from their positions because they threaten to file a charge with the National Labor Relations Board against the Union.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

#### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its union office in East Windsor, New Jersey, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2004.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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<sup>5</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>6</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

5 Dated, Washington, D.C.

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Steven Davis  
Administrative Law Judge

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**APPENDIX**

**NOTICE TO MEMBERS**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain on your behalf with your employer  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT remove union shop stewards and alternate shop stewards from their positions because they threaten to file a charge with the National Labor Relations Board against the Union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 827, AFL-CIO**

(Labor Organization)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

20 Washington Place, 5th Floor  
Newark, New Jersey 07102-3110  
Hours: 8:30 a.m. to 5 p.m.  
973-645-2100.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784.

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